

1 this would have been faxed out as opposed to afterwards?

2 A Yes.

3 Q Taking that into account, can you recall whether
4 or not Mr. Nourain ever telephoned you after he received
5 what is on Tab 7, Exhibit 58, to make corrections or to make
6 comments about it?

7 A I don't know.

8 Q I'd like you to look now at TW/CV Exhibit 61 which
9 is Tab 10 in your book. And look at the entry for 4/20/93
10 and there seems to be a few different things listed there
11 that happened or that you performed on that day. One was a
12 letter to I guess Mr. McKinnon. Also, you drafted
13 certificates of construction and you're prepared
14 modifications applications, correct?

15 A Correct.

16 Q Would that, would the order listed here
17 necessarily mean that was the order those tasks were
18 performed in?

19 A Not necessarily.

20 Q Now, prior, at the time -- strike that. Do you
21 know if Mr. Nourain had any understanding of STAs prior to
22 the time you sent out your April 20th, 1993 letter?

23 A I'm not aware that he did or did not.

24 Q Can you recall if you had had any discussions with
25 Mr. Nourain prior to April 20th, 1993 about STAs?

1 A I don't know specifically. I think I recall from
2 the deposition that we saw some entries about discussions,
3 but I'm not sure if they were with Behrooz or not.

4 Q Can you recall if he ever asked you to file STAs
5 prior to April 20th, 1993?

6 A No, I don't recall that. Obviously, there were
7 conversations about how they could construct and operate
8 facilities that hadn't yet been licensed and there was
9 discussion of the STA procedure.

10 Q In those discussions, did it appear to you that
11 was the first Mr. Nourain had learned of the existence of
12 STAs or the possibility of STAs?

13 A I don't know whether that's true or not.

14 Q All right. I'd like you to go to TW/CV Exhibit 3
15 which is the one inventory being discussed just a moment ago
16 and turn to page 19.

17 A I'm afraid I closed it, I'm sorry. I'm sorry,
18 page what?

19 Q Page 19. And there was just a brief discussion
20 about the path handwritten down at the bottom 333 East 55th
21 Street.

22 A Yes.

23 Q Now, this inventory was prepared on or about
24 April 6th, 1993, correct?

25 A As it was originally prepared, without all the

1 handwritten marks on it.

2 Q So then my question is the fact this 333 East 55th
3 is handwritten there, does that mean that the discussion
4 about the path for that address occurred after April 6th,
5 1993?

6 A Yes.

7 MR. WEBER: Thank you. That's all the questions
8 the Bureau has.

9 JUDGE SIPPEL: Questions from Liberty.

10 MR. SPITZER: No, Your Honor.

11 JUDGE SIPPEL: I'm just looking through some of my
12 notes here, but I don't, I think that the areas have been
13 thoroughly covered with your testimony this morning. I have
14 no questions.

15 THE WITNESS: Okay.

16 JUDGE SIPPEL: I do want to thank you for
17 appearing. I know you came in voluntarily without the need
18 for subpoena and you know you're not a party to this case.
19 That's very much appreciated. And have a safe trip back.

20 THE WITNESS: Okay. Thanks.

21 JUDGE SIPPEL: It's 12:30. Let's off the record
22 for just a minute.

23 (Whereupon, a brief recess was taken.)

24 JUDGE SIPPEL: We're back on the record. We're
25 going to reconvene at 1:30 which gives us an hour for lunch

1 and for Mr. Barr to prepare. Mr. Barr will not be here,
2 however, is not asked to come to the Courtroom until quarter
3 of 2:00 so that Mr. Beckner can go over some preliminary
4 matters at that time. And as I promised before, just wait
5 one minute, Ms. Richter, I will get you a copy of your
6 deposition that I have. Having said all that, then we're in
7 recess. Thank you, very much.

8 (Whereupon a lunch break was taken from 12:32 p.m.
9 to 1:40 p.m.)

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1 your exhibit TW/CV Exhibit 53. It's already been marked for
2 identification. Is there any objection to receiving it?

3 MR. SPITZER: No, we have no objection, Your
4 Honor. We obviously may disagree with Mr. Beckner's
5 conclusions he'll draw from it, but we have absolutely no
6 problem --

7 MR. BECKNER: I haven't even said what conclusions
8 there are.

9 JUDGE SIPPEL: Well, it's a -- under the more
10 liberal rules of the APA, I'll receive it. But it obviously
11 doesn't have the credibility as, it's not going to have the
12 strength as would his direct testimony. Although I want to
13 say very quickly I appreciate your not asking him to come in
14 or asking me to require him to come in for the testimony
15 that's in that deposition. So having said those things, I
16 am receiving into evidence the McKinnon deposition which is
17 TW/CV 53. That's now in evidence. Very well.

18 (Document previously marked
19 for identification as TW/CV
20 Exhibit 53 was received in
21 evidence.)

22 MR. BECKNER: Now, Your Honor --

23 JUDGE SIPPEL: Your next item?

24 MR. BECKNER: Excuse me?

25 JUDGE SIPPEL: I say your next item.

1 MR. BECKNER: Oh, yes. The other item, while we
2 haven't -- Exhibit 14, Tab 14, which is Exhibit 65 we'll
3 deal with that when Mr. Price is on the stand tomorrow.

4 MR. SPITZER: I'm not sure, this is? The
5 February 24th?

6 MR. BECKNER: Right.

7 MR. SPITZER: '95.

8 MR. BECKNER: Yes.

9 JUDGE SIPPEL: So that the record is clear on
10 this, you're referring to a document which the Reporter
11 marked this morning as your proposed exhibit number 65 which
12 is a letter from Mr. Lehmkuhl to Mr. Price dated
13 February 24, 1995. That's correct?

14 MR. BECKNER: That's correct, Your Honor.

15 JUDGE SIPPEL: That's what it is. Okay. And
16 we'll take that up with Mr. Price tomorrow.

17 MR. BECKNER: Okay. Now, the other item is
18 Exhibit 13 which is a summary exhibit under Rule 1006 of the
19 rules of evidence and which as the exhibit says on its face
20 is based on a document that's already in evidence which is
21 the installation progress reports.

22 It's information taken directly from that exhibit
23 and it's based on copies of FCC applications filed by
24 Liberty and the dates that are on those applications. And
25 we have made available to Liberty that underlying

1 information. Although I assume they already have that.

2 Technically speaking, if we were going to be very
3 formal, we would offer that exhibit through the witness who
4 put it together which would be a legal assistant from my
5 office and she would simply testify that she took the dates
6 off of the installation progress report for these addresses
7 and took the dates off of the FCC applications. I can do
8 that. I was hoping that we could avoid that kind of
9 mechanical process in terms of laying the foundation for the
10 admission of the document. And I can certainly do that
11 tomorrow. I can bring her in tomorrow just to testify as to
12 how this was prepared. I think it's evident how it was
13 prepared.

14 JUDGE SIPPEL: Well, I'd be more interested,
15 what's the proffer of the relevance here?

16 MR. BECKNER: All right. The relevance of the
17 document is that it shows a number of instances where during
18 the period surrounding the time of -- that Ms. Richter
19 testified about; that is the first half of 1993, a number of
20 instances where according to Liberty's business records,
21 they commenced operation of a microwave path to an address
22 in the same month or before the month in which the
23 application for that address was filed.

24 And Ms. Richter in her deposition, I mean, I'm
25 sorry, in her testimony here this morning went through a

1 number of those addresses and indicated in response to my
2 question that based on her inventory that applications for
3 those addresses -- for new paths for those addresses were
4 added.

5 The relevance is two-fold. Number one, the larger
6 question raised by Ms. Richter's letter is whether or not
7 there was some sort of unauthorized activation in 1993,
8 either that she did or didn't know about that might have
9 been the result of Mr. Nourain misunderstandings of the
10 rules that she testified about.

11 And number two, as to whether or not following the
12 information about the rules that Ms. Richter testified that
13 she conveyed to Mr. Nourain orally and in writing in the
14 April 20th letter whether or not there was any change in
15 response to that information by Mr. Nourain or by Liberty.

16 Thirdly, the question is if you have, I'm sure
17 that Liberty is going to say that if there was unauthorized
18 operation, they didn't know about it. Or it was
19 unintentional as they have said with respect to 1994 and
20 '95. That claim is called into question the more instances
21 you have of an unauthorized operation.

22 In other words, you might make a mistake once.
23 You might make a mistake twice. It's kind of hard to
24 imagine you'd make a mistake 22 times in the space of the
25 one year period. We think it's admissible to show a pattern

1 of behavior in 1992 and 1993 which in fact as we already
2 know was repeated in 1994, 1995. That pattern being
3 commencement of operations of microwave facilities before
4 authorization was received to do so.

5 JUDGE SIPPEL: I take it from your description
6 that all of these incidents, these 21 incidents, are outside
7 the timeframe of the hearing designation.

8 MR. BECKNER: That's correct, Your Honor. We
9 stated right up front that the period covered is between
10 July 1, '92 through June 30, '93. Now, I want to add that
11 we are unable to determine when some of these applications
12 were actually granted. So that this exhibit refers only to
13 instances where as you can see an installation date
14 according to Liberty's records is either before or during
15 the same month when an application was filed. There may be
16 other instances where an installation date was -- after an
17 application was filed, but before it was granted. And if
18 there is such an instance, it's not on these pages.

19 JUDGE SIPPEL: What's the Bureau's position on
20 this, Mr. Weber?

21 MR. WEBER: Well, as you know, Your Honor, the
22 Bureau has made clear in its comments relating to this added
23 issue of this new round of testimony that we don't believe
24 it's relevant whether or not there were earlier premature
25 activations that's not relevant to the designated issues.

1 The designated issues are solely to the pending
2 applications. And any paths listed here are now fully
3 licensed paths and we're well beyond the one year statute of
4 limitations if indeed there was a violation to impose any
5 type of forfeiture.

6 As for this document itself, the evidentiary body
7 I think would be obviously low because it's not really a
8 document prepared by Liberty or anything like that. It's
9 prepared by Time Warner merely as more of a -- something
10 that can be used for review.

11 And therefore, this could be used maybe to see if
12 we can refresh any witnesses's recollection. I think it
13 could stand some use. But beyond that, I don't see its use.
14 The Bureau does maintain the only issue here before this new
15 round of testimony is to find out what Liberty knew prior to
16 April of 1995.

17 And if indeed there were premature activations
18 prior to April, 1995, just the proving of that premature
19 activation doesn't show anything about the knowledge of any
20 of these witnesses or anything that they've testified to
21 previously. And therefore, I don't see how it really fits
22 into this round.

23 If it can be used to refresh their recollection,
24 if you can put this before Mr. Nourain and Mr. Price, and
25 they first testify, oh, I didn't know of any earlier

1 premature activations, you show them a document showing if
2 there were any others and ask them if it refreshes their
3 recollection and you could see if it does do that.

4 The Bureau does take the stance that this round of
5 testimony today is really just to find out whether or not
6 witnesses knew prior to April of 1995 of any premature
7 activations.

8 JUDGE SIPPEL: Well, isn't the, isn't there also
9 an issue as to whether they knew or should have known?

10 MR. WEBER: Well, I'm not real sure the issue does
11 go so far as to whether or not they should have known. That
12 certainly is I think in part the reason the Bureau is
13 requesting a rather substantial forfeiture against Liberty
14 saying that they, even up until April, 1995, the fact that
15 the 14 designated paths were operated prematurely. That is
16 something Liberty certainly should have known they were
17 doing.

18 And the fact they didn't know up until April, 1995
19 they should be subjected to a rather substantial forfeiture.
20 And I'm not real sure how showing that, well, maybe if they
21 indeed were doing it in 1993, I'm not real sure how that
22 weighs on whether or not they should have known in 1995.

23 JUDGE SIPPEL: I'm not going to argue the point
24 with you, but what about the -- this issue that we're back
25 on today, tomorrow, goes to a state of mind of the officials

1 at Liberty during a certain timeframe? This is before that
2 timeframe, this exhibit would cover a period before that
3 timeframe. But nonetheless, if it goes to a state of mind
4 in terms of -- or a state of condition. I mean, it might
5 not. A state of condition is as equally relevant to the
6 occurrence of the event as a state of mind. State of mind
7 is much more important. But nonetheless, you have a state
8 of condition being demonstrated here that you starting back
9 in 1992 has been a series of preactivations. Now, at what
10 point in time knowledge kicks in, of course, that's what
11 this is all about. But it's, before I go any further with
12 this, and, of course, I'm the to hear from Mr. Spitzer and
13 Mr. Begleiter. But I was just wondering what the, I'd like
14 to hear what the Bureau's position would be with respect to
15 that.

16 MR. WEBER: Well, the Bureau has a concern of this
17 case ballooning into a complete, I guess, inventory or
18 evaluation of every single one of Liberty's licenses. They,
19 I believe, have a couple of hundred licenses. And we really
20 want to, I mean, this case is already expanded beyond I
21 think what the Bureau initially expected it to grow beyond.

22 JUDGE SIPPEL: Who's fault is that?

23 MR. WEBER: Well, I mean, I don't know if it's
24 anybody's fault. It's just that evidence kept coming out
25 that there may be additional problems. But I think the

1 Bureau wants to keep or at least try to see to it that the
2 case keeps sight of what the real issue is and it's a real
3 issue of the designated applications and what should be the
4 penalty for the fact that there was illegal operation of
5 those designated applications.

6 And the fact that this is concerning applications
7 now or licenses now that are fully granted and were beyond
8 the statute of limitations period, right now, Your Honor,
9 you have no authority to act upon any of these applications
10 or any of these licenses. My reading of the hearing
11 designation order doesn't give you authority to revoke any
12 other licenses.

13 JUDGE SIPPEL: But that's not what my question is
14 about at all. This is not adding issues or going into
15 licenses that have not been specified in the designation
16 order. It's, as I said before, it's two things. It's a
17 state of mind and a state of condition.

18 The state of condition that the company has been
19 admittedly right from the time of the designation or this
20 hearing commenced has been admittedly what one wants to say
21 the least. Isn't it relevant to know what the full, well,
22 within certain limits of course, to know what the full
23 condition of that situation was? We're not talking about
24 going in now and proving each of these situations and going
25 into why it happened. That's a different concern about this

1 type of evidence.

2 MR. WEBER: I think what you're saying now is
3 consistent with the position the Bureau's been maintaining
4 and that's anything that can show knowledge of the witness's
5 prior to April 1995 we indeed believe is highly relevant.
6 and to the extent that this can be used, this meaning
7 Exhibit 64, can be used to demonstrate any type of knowledge
8 prior to April '95 or even state of condition as you're
9 wording it, we believe it could be useful.

10 But like you just said, we do want to avoid a
11 complete investigation into every single one of the 21, 22
12 paths listed here as well as any other paths branded or
13 applied for during this same time period. But to question
14 witnesses on the state of condition during that, using this
15 document to see if that in any way reflects their knowledge
16 of what was going on in April of 1993, we would believe that
17 the Bureau would have to maintain it's relevant.

18 JUDGE SIPPEL: All right. Well, in terms of
19 allowing this case to expand into questions like this, I'm
20 going to pick up on that comment and remind the Bureau as
21 well as everybody else here, you know, there's a very
22 comprehensive internal audit report that might have saved a
23 heck of a lot of time. So I don't feel in any way that the
24 Commission's work is not being done by considering evidence
25 such as this. Now, what we do with it, I still have to hear

1 from Mr. Spitzer.

2 MR. WEBER: You do also know the Bureau's position
3 on the audit report.

4 JUDGE SIPPEL: Yes, I do.

5 MR. WEBER: It is different than Liberty's on
6 that.

7 JUDGE SIPPEL: I understand the Bureau's position,
8 the Commission's position, Time-Warner's position and my
9 position.

10 MR. BECKNER: Your Honor, can I just respond to
11 one thing that Mr. Weber said briefly? And then Mr. Spitzer
12 will then have the benefit of responding to everything that
13 I have said.

14 JUDGE SIPPEL: Is that all right, Mr. Spitzer?

15 MR. SPITZER: I'll cede the floor.

16 JUDGE SIPPEL: He wants to see the table set.

17 MR. BECKNER: There's one point that I failed to
18 make that I think addresses the question that you and
19 Mr. Weber were discussing and that's why I asked to
20 interrupt.

21 Liberty said in its surreply which is Exhibit 18
22 already admitted, and if you remember there was a lot of
23 questioning about this I think of Mr. Barr, including some
24 from the presiding Judge. It said it has been Liberty's
25 pattern and practice to await a grant of either a pending

1 application for request for STA prior to making a microwave
2 path operational. Now, the designated issues in the HDO
3 include the truthfulness of statements made to the
4 Commission in support of these applications of which this
5 obviously is one.

6 Now, at the time of the hearing my recollection is
7 that there was some questions from the presiding Judge and
8 Mr. Barr as to whether or not this statement was intended to
9 exclude the instances that were lifted in the appendix to
10 the HDO of premature operation? And I can't really remember
11 how it came out. Quite frankly, I always read this
12 statement as intending to exclude those instances of
13 unlicensed operation. But I'm not sure that other people,
14 in other words, I read this statement as saying before we
15 started making these mistakes in the middle of 1994, we
16 always awaited a grant of an application or an STA before we
17 made a microwave path operation.

18 Regardless of how you interpret it, whether you
19 interpret it that way or you interpret it as an unqualified
20 statement, Exhibit 64 that I have proffered to the
21 proceeding is a contradiction of that statement because it
22 shows instances of prior operation.

23 Now, whether or not Liberty knew about them is a
24 separate question. But the fact is that the statement I
25 just read in the surreply is not correct. And it's not

1 correct because of what's in Exhibit 64. I'm not suggesting
2 that this proceeding should revoke any of these licenses or
3 whatever. That's clearly beyond the scope of the
4 proceeding. But what's within the scope of the proceeding
5 is whether or not in support of the caption applications,
6 Liberty told the Commission the truth. And Liberty told the
7 Commission it's been our practice to await the grant before
8 we turn it on. And what I'm showing here in this exhibit is
9 that in fact they didn't await a grant in 22 instances or 21
10 instances, during the 12 month period beginning July '92 and
11 ending July '93.

12 JUDGE SIPPEL: Mr. Spitzer.

13 MR. SPITZER: My turn? Just briefly, Your Honor.
14 With respect to the audit, obviously the argument was held
15 before the D.C. Circuit and they have continued in effect
16 the stay of the dissemination of that report because of the
17 privilege issues and other issues raised. So obviously,
18 that is still status quo and we understand everybody's
19 position. That is that the D.C. Circuit has continued its
20 stay.

21 As a friend of mine loves to say, everything has
22 been said but everything hasn't been said by me today. So
23 I'll start over again. But I do feel as though we're going
24 around the block over and over on this issue. Your most
25 recent ruling said specifically in view of that limited time

1 period for factual inquiry, there has not been an adequate
2 showing of the decisional significance of a 1993 activation.

3 This issue has crept up over and over again.

4 Mr. Beckner himself in this submissions to the Court
5 specifically stated he was not going to undertake an audit
6 of prior activation because it was not relevant.

7 Now, the reasons for the irrelevance of this data
8 as summarized in this document I think has been very well
9 stated by Mr. Weber. The issue is knowledge. The issue is
10 not did this happen? Did it not happen? And we are by no
11 means conceding that any of the dates in here are correct
12 and we would have to go through it thoroughly to see what
13 these dates mean.

14 Because unfortunately, I think Mr. Beckner
15 misstated this a bit. We only got wind of this exhibit late
16 yesterday afternoon and then he faxed it to us. We didn't
17 get a hard copy of it. We have not had any opportunity to
18 look at these dates.

19 But the only issue before the Court, and this was
20 the reason that you reopened this expedited hearing, was to
21 determine the knowledge of the witnesses. Did they know as
22 of the date of the Richter letter or shortly thereafter of
23 the premature service? Did they know?

24 Mr. Beckner, and we did not object, asked Jennifer
25 Richter were you told by Behrooz that he had activated this

1 path or that path? And he referred specifically to many of
2 the paths that are in this chart. Fair question. No
3 objection from us. If he wants to ask her did you know,
4 that is the issue before the Court.

5 But what is not before the Court is as a matter of
6 fact was that path prematurely activated. And it would be
7 wrong to admit into evidence a document whose accuracy is
8 highly suspect in my mind. But I hope we don't need to get
9 into that.

10 A document which would purport to represent the
11 dates of premature activation as though somehow the facts of
12 that premature activation was relevant to the issue before
13 the Court. And again, we think that the Court has addressed
14 this issue repeatedly throughout the course of this
15 litigation.

16 JUDGE SIPPEL: Okay. Do you want any last word on
17 this? I mean, I think he said it pretty well. I will
18 permit, well, I'm not going to -- no. I'm going to, you're
19 moving at this point to take it to receive this into
20 evidence. It's marked as an Exhibit 64 for identification.
21 It can go up on a proffer. But I'm going to reject it
22 basically as a matter of timeliness.

23 And now I'm also hearing that there is a question
24 with respect to its accuracy. And I'm not going to allow
25 this hearing to expand into some related issues of accuracy.

1 And in fairness to Liberty really the witnesses,
2 Mr. Nourain particularly, should be in a position to look at
3 each of these, each of these delinquent so-called items and
4 attempt to reconstruct. Maybe he has some explanation as to
5 one, two or three of them.

6 It's going to expand into a collateral issue or
7 issues that I'm just not despite the misgivings that I
8 indicated earlier, I just can't permit the case to be
9 expanded at this point. And I can't take your proffer
10 shortcut I think without depriving Liberty of some very
11 significant rights in this.

12 However, I do feel that it's, I do think that this
13 is relevant evidence.

14 (Document previously marked
15 for identification as TW/CV
16 Exhibit 64 was rejected.)

17 MR. BECKNER: I beg your pardon, sir?

18 JUDGE SIPPEL: I say I believe, I consider it to
19 be relevant evidence on the issue of, on the issue of
20 knowledge, of knowledge, which is what this is all about.
21 It's just that it's coming in too late and it's too, it's
22 going to be too complex. And to give Liberty its day in
23 Court, it would expand this case on a collateral issue that
24 I'm just not prepared to let it happen. So that's my
25 ruling.

1 MR. BECKNER: I have the applications if that's
2 the problem.

3 JUDGE SIPPEL: I understand that. I understand
4 that. But they've, you know, this was only given to them,
5 what are we talking about? Forty-eight hours ago?

6 MR. BEGLEITER: No, no. Twenty-four.

7 MR. SPITZER: Eighteen.

8 JUDGE SIPPEL: Well, we'll cut the difference at
9 20 to 24 hours ago. And certainly they were entitled to go
10 back and have each of these columns that you have examined
11 for accuracy and they also have the right to have at least
12 Mr. Nourain's, perhaps Mr. Nourain and Mr. Price and
13 Mr. Ontiveros take a look at this and see if there's
14 anything that they have to say about it. Now, as I say,
15 it's just too late in the game for that. I used the wrong
16 term. It's not too late. It's too late in this proceeding.

17 MR. BECKNER: Your Honor, I want to make it clear
18 that the Wiley, Rein firm, in fact their lawyers were just
19 sitting here this morning, has been from the beginning
20 representing Liberty in this case along with the Constantine
21 firm and they had delivered to them yesterday a copy of this
22 notebook that had all the underlying applications as well as
23 the exhibits. So while it may be true that Mr. Spitzer and
24 Mr. Begleiter did not have the full load of material, their
25 colleagues in Washington did.

1 JUDGE SIPPEL: Well, you know, you've been with
2 this case as long as I have and you know where the laboring
3 oar is going as far as this in Court litigation is
4 concerned, number one. And number two, you've known for
5 over a month now how long that this hearing was going to
6 take place.

7 And you're relying on the Federal Rules of
8 Evidence 1006. And when you start going down that road,
9 things have got to be exchanged at the beginning, not 24, 48
10 hours beforehand. I mean, I'm just not going to put that
11 kind of a burden on Liberty for this kind of evidence.

12 I'm sorry, but that's my ruling. I think you did,
13 I don't understand did a good job putting it together and I
14 think it's relevant, notwithstanding what Mr. Spitzer said,
15 I think it's relevant as to frame of mind, but not as to
16 violations.

17 So this case has just got to go forward. My
18 ruling is I'm denying your motion. The motion is to move
19 your number 64 into evidence for the reasons I stated, it's
20 denied. Does that conclude, does that conclude your
21 preliminary matters and can we bring Mr. Barr in for his
22 testimony?

23 MR. BECKNER: Yes, it does conclude the
24 preliminary matters. Let me just if I might ask one
25 question so I understand. Am I going to be permitted to ask

1 other witnesses the same kinds of questions that I asked
2 Ms. Richter this morning without objection from Liberty
3 under the Court's ruling?

4 JUDGE SIPPEL: Well, whatever questions you were
5 asking Ms. Richter, you know, whatever recollection you can
6 get out of witnesses with respect to the Richter letter
7 that's relevant to the Richter letter, certainly.

8 MR. BECKNER: No, what I was meaning specifically
9 was is, for example, would I be permitted to ask Mr. Nourain
10 whether or not he recalled commencing service at 812 Fifth
11 Avenue in February of '93 and signing an application in
12 April of '93 for that path just as an example?

13 JUDGE SIPPEL: Well, you've got the testimony --
14 this is not maybe, I don't mean to be, to be avoiding the
15 question. But Ms. Richter did testify to a specific
16 property that goes beyond this period of time that she
17 actually wrote in on the inventory.

18 MR. BECKNER: Right.

19 JUDGE SIPPEL: All I said was it 333 something?

20 MR. BECKNER: Well, there was one in May I think
21 it was, yes.

22 JUDGE SIPPEL: I've seen those numbers before.
23 Now, of course, if she testified to it and you survived any
24 objections to go down that path with her, certainly you can
25 go down that path with Mr. Nourain.

1 MR. BECKNER: All right.

2 JUDGE SIPPEL: Because -- and the reason is, and
3 I'm going to be very clear about it, the reason is that
4 because she first of all, she has testified to it, it's the
5 Richter letter and the matters in the Richter letter that
6 are at issue here for these two days. And as a matter of
7 discretion, I find that that kind of questioning is not
8 going to delay anything and Liberty's going to have its day
9 in Court with respect to it. But that's a far cry different
10 from 21 instances laid out here under 1,006 in your
11 Exhibit 64. That's my ruling.

12 MR. BECKNER: Okay. I just -- I'm asking the
13 question now so as to avoid offending the presiding Judge by
14 mistake or accident while I'm questioning the witness and
15 that's why I'm seeking the clarification so I understand
16 what I'm permitted to do.

17 JUDGE SIPPEL: Point well taken. Let's get
18 Mr. Barr in here.

19 MR. BECKNER: Yes, I'm ready for Mr. Barr.

20 JUDGE SIPPEL: Let's off the record for a minute.

21 (Whereupon, a brief recess was taken.)

22 JUDGE SIPPEL: Mr. Barr, I believe you're under
23 oath, but just to be on the safe side I'm going to
24 administer the oath.

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